MOTION FILED
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(29)

NO. 84-773

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MICHAEL BENDER, et al.,

Petitioners,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT DISTRICT, et al.

MOTION FOR LEAVE TO FILE POST-ARGUMENT BRIEF AND POST-ARGUMENT BRIEF OF RESPONDENTS

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MOTION TO FILE SUPPLEMENTAL BRIEF

Pursuant to Rule 35.5 of the Rules of this Court, Respondents move to be allowed to file a Supplemental Brief.

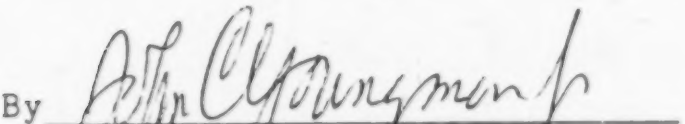
The facts set forth in said Brief were not brought to the Court's attention at oral argument. Nor do these facts appear in the Briefs filed in this case. Counsel for Petitioners intimated that the public forum question was not argued before the District Court for the Middle District of Pennsylvania in this matter. The material to be called to the Court's attention shows, from the Appendix filed in the United States Court of Appeals for the Third Circuit, that the public forum question was argued before the District Court.

Respondents believe a short Supplemental Brief responding to the Post-Argument Brief of Petitioners will be of assistance to the Court in its decision.

WHEREFORE, movants respectfully request that their Motion for Leave to file the following Post-Argument Brief be granted.

Respectfully submitted,

CANDOR, YOUNGMAN, GIBSON & GAULT

By 
John C. Youngman, Jr., Esquire
Attorneys for Respondent

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

MICHAEL BENDER, et al.,

Petitioners,

v.

THE WILLIAMSPORT AREA SCHOOL DISTRICT DISTRICT, et al.

POST-ARGUMENT BRIEF OF RESPONDENTS

The Court's attention is called to the following facts:

1. The public forum question was argued before the District Court. The contrary was indicated by Petitioners' counsel at oral argument. This matter appears in the Appendix filed with the Court of Appeals Pages A303

through to the middle of Page A334, inclusive.

2. Paragraph 1 of the Complaint filed in this matter stated that each member of the School Board was sued in his individual, as well as, his official capacity (J.A. 13). Paragraph 1 of the Complaint was incorporated in all Counts of the Complaint (J.A. 17, 18, 19).

3. The District Court granted a judgment against the Defendants and not simply against the Williamsport Area School District (P. App. 105a).

4. Petitioners' bill for attorney's fees was filed against all Defendants (J.A. 146) and not just against the Williamsport Area School District.

I. STANDING TO APPEAL

Respondent was a named Defendant

in this action. A judgment was entered against him that he violated the constitutional rights of Petitioners. Respondent should have standing to appeal such a judgment in order to clear his name if for no other reason.

Respondent was and is threatened at all times in this litigation by the Complaint and by the Motion for Attorney's Fees with liability for the attorney's fees of Petitioners. Respondent has a right to defend against this threat. If Respondent's appeal on the merits is resolved in his favor, then he could not be subject to any liability for attorney's fees.

Respondent agrees with Petitioners' Post-Argument Brief with respect to his standing as a parent of a child in the high school. Inasmuch as

he was named as a party and at all times has been a party to this lawsuit, there was no need to intervene. A jurisdictional statement as to his parent capacity could have been readily supplied if his standing had been objected to at any point.

II. MOOTNESS

This case is not moot for the reasons stated in footnote 4 of the Court of Appeals' Opinion (P. App. 4a). The adding of new Plaintiffs would relate back to the beginning of the action pursuant to the provisions of F.R.C.P. 15.

In any event, if this case is moot for any reason other than the standing of Respondent to appeal originally, the rule of United States v.

Munsinzwear, Inc., 304 U.S. 36, 71 S. Ct. 104 (1950) should apply.

Respectfully submitted,

CANDOR, YOUNGMAN, GIBSON & GAULT

By _____
John C. Youngman, Jr., Esquire
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that three copies of the within Motion for Leave to file Post-Argument Brief and Post-Argument Brief of Respondents has been served on the following, by placing same in the U.S. Mail, postage prepaid, this 7th day of November, 1985.

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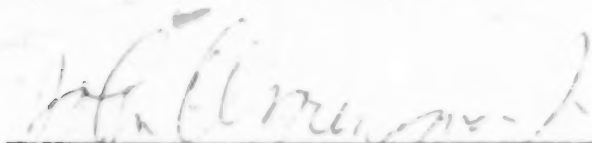

John C. Youngman, Jr., Esquire